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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LISA HARWIN,

Plaintiff and Respondent,
v.

KANDARP OZA et al.,

Defendants and Appellants.

2d Civil No. B230010
(Super. Ct. No. 1305816)
(Santa Barbara County)

In this declaratory relief action, adjoining property owners dispute the nature, scope and existence of an easement purportedly giving the dominant estate the right of access over and parking spaces upon the servient estate. The dispute arises from a 1993 lot line adjustment obtained by the parties' common grantor.

The trial court found that respondent Lisa Harwin had an express easement for ingress and egress and 12 parking spaces on and over adjacent property owned by appellants Kandarp Oza and Dashka Oza. The trial court found in the alternative that Harwin had established a prescriptive easement by open, notorious, adverse and hostile use for 15 years. We affirm.

*STATEMENT OF FACTS AND PROCEDURAL HISTORY*

Nick Mallas owned adjacent parcels near the corner of Hollister Avenue and Aero Camino in the County of Santa Barbara. Each parcel was zoned for commercial use

and contained a commercial building used for a variety of commercial purposes. In 1993, the County planning commission approved a lot line adjustment which resulted in one of the parcels gaining a parking lot previously belonging to the adjacent parcel. A condition of the lot line adjustment required Mallas to record an agreement by which the parcel that acquired the parking lot grant an easement for adequate parking to the parcel deprived of parking by the lot line adjustment.[1] To fulfill the condition of the lot line adjustment, Mallas executed and recorded on October 7, 1993, a document entitled "Dedication of Parking Spaces Agreement." It states in part:

"C. WHEREAS, as conditions of approval of the Lot Line Adjustment,

"(1) COUNTY requires that OWNER agree to dedicate adequate parking spaces for the current and future use of Lot 2 [subsequently, the Harwin Property] of said [Lot Line Adjustment] at such time as OWNER conveys title to either Lot 1 [subsequently, the Oza Property] and/or Lot 2; and for

"(2) Access to said parking spaces; all being across, under, over and through Lot 1 . . . for the benefit of Lot 2 . . . and any further divisions of said Lot 2; and

"(3) County requires that Pedestrian access shall not be precluded between the two parcels; and

"D. WHEREAS, OWNER and COUNTY desire this Agreement to ensure that said easements will be created by OWNER at the time of such conveyance in accordance with the aforesaid conditions of approval.

"NOW, THEREFORE, the undersigned OWNER, the beneficiaries, the successors and assigns, does hereby agree as follows:

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**1** On appeal, Oza requests that we take judicial notice of the City's parking regulations. We decline to do so. Municipal ordinances are subject to judicial notice. However, judicial notice should be denied if the material is irrelevant.

Here, judicial notice is denied because the parking regulations are not relevant to the issue decided by the court, i.e., the interpretation of the term "adequate" parking in the County of Santa Barbara's approval of the lot line adjustment, for at least two reasons: (1) The City of Goleta was not incorporated until 2002; the lot line approval was granted in 1993. Thus, Goleta's parking regulations were not in effect when the lot line adjustment was granted, and (2) nowhere in the legislative history of the lot line adjustment were County (much less City) parking regulations considered or discussed.

"1. Contemporaneous with the conveyance of Lot 1 and/or Lot 2 . . .

"(a) OWNER shall create easements to accomplish the reservations as noted in Section C above, over Lot 1 . . . to be appurtenant to and for the benefit of Lot 2 . . . and any further divisions of said Lot 2, as location of said easements are generally described as adequate parking spaces for current and future use of Lot 2.

"(b) Pedestrian access shall not be precluded between Lot 1 and Lot 2 . . . .

"2. This Agreement is recorded, shall run with the real property described herein and shall be binding upon and inure to the benefit of the parties hereto and its beneficiaries, successors and assigns."

Subsequently, Mallas sold Lot 1 to Oza (the Oza Property) and Lot 2 to Harwin's late husband (the Harwin Property). The grant deeds transferring ownership of each of the properties contain the following language:

"An easement for parking spaces, ingress to and egress from for current and future use over Parcel 1, appurtenant to and for the benefit of Parcel 2 of Lot Line Adjustment 93-LA-008 . . . .

"Said easement is more fully described in document entitled 'DEDICATION OF PARKING SPACES AGREEMENT,' recorded October 7, 1993 . . . ."

Oza initially negotiated for purchase of both Lot 1 and Lot 2, but decided to purchase only Lot 1. During the negotiations for purchase of Lot 1, Oza expressed concern about the easement in favor of Lot 2. He placed the following condition on the purchase of Lot 1: "Buyer . . . has the right to review and approve the County mandated Easeme[n]t and parking allocations between [Lot 1] and [Lot 2]. Buyer has right to cancel this contract upon his review of above condition."

Apparently to satisfy Oza's concerns, and while Mallas still owned both parcels, Mallas executed, as both grantor and grantee, a document entitled "Easement and Maintenance Declaration," (E&M Declaration) stating in part:

"C. Grantee desires to declare certain parking rights in that part of [the Oza Property] described as follows: twelve (12) spaces to be designated from time to time by

Grantor and for which Grantor has the right to charge the market rate for any parking spaces used by Grantee . . . .

"D. Nick Mallas, Trustee, owns both parcels o[f] real property described on the attached Exhibits 'A' and 'B.' This parking easement is being recorded to satisfy the Santa Barbara County requirements as a result of an approved Parcel Line Adjustment (93-AL-008) to provide adequate parking for [the Harwin Property].

". . . . . .

"4. The use of this parking easement is subject to the Grantor's right to charge a market rate for any parking spaces used by Grantee. Said market rate shall include, but not be limited to Grantor's expenses to insurance and maintain the parking premises."

On December 2, 1993, escrow closed on the Oza Property. On December 16, 1993, the E&M Declaration was recorded. On or about February 28, 1994, Mallas executed a deed granting the Harwin Property to Harwin's late husband.

In February or March, Oza learned that the title company would not accept the E&M Declaration. On April 14, 1994, and May 9, 1994, respectively, Oza and Mallas executed a document entitled "Cancellation of Easement and Maintenance Declaration." In this document, Mallas as owner of the Harwin Property, and Oza, as owner of the Oza Property, agreed to "rescind, revoke and cancel the '[E&M Declaration],' referred to above in its entirety."

On April 27, and May 9, 1994, Oza and Mallas executed a document entitled "Agreement Between Owners of Adjacent Real Property Re: Parking" (ABO). The ABO states in part:

"WHEREAS, PARCEL 2 has a dedicated parking easement on PARCEL 1; and

"WHEREAS, said parking easement requires 'adequate parking spaces for the current and future use of PARCEL 2,' and

"WHEREAS, the owners of PARCEL 1 and PARCEL 2 seek to define the 'current use' needs of PARCEL 2 and the participation of LOT 2 in the expenses associated with said use.

"Therefore the parties hereto agree as follows:

"1. The current use of PARCEL 2 is for restaurant purposes consisting of a total building area of approximately 4,800 square feet. The building area devoted to patrons is approximately 3,000 square feet and four (4) full-time employees are typically on the premises.

"Santa Barbara County Zoning Ordinance Article III, Section 35-258.2 entitled 'Parking Regulations, Required Number of Spaces: Commercial,' requires one (1) parking space per 300 square feet of building devoted to patrons and one (1) space per two (2) employees. Based on the current use on PARCEL 2, the parking required is twelve (12) spaces. Currently, fourteen (14) parking spaces are marked within PARCEL 2 necessitating no additional parking spaces required outside of PARCEL 2.

"Therefore, based on current use and the existing/historic parking within PARCEL 2, no additional parking spaces are required outside of PARCEL 2.

"2. In event that a change of use on Parcel 2 would require additional parking spaces above and beyond the current use as described above, these additional spaces as required by the County will be provided on Parcel 1, provided: the owner of PARCEL 2, as a condition of using such space for parking shall submit to owner of PARCEL 1 evidence of liability insurance naming PARCEL 1 as additional insured for not less than two million dollars; and pay pro rata expenses of PARCEL 1's expenses for real property taxes, insurance and maintenance related to PARCEL 1's parking lot . . . ."

For approximately two years after purchase, a portion of the building on the Harwin Property continued to be used as a restaurant. When the restaurant closed, Harwin leased the space to Ocean Glass Company. At Ocean's request, Harwin remodeled the space by installing a large door in the rear of the building to accommodate Ocean's need for loading and unloading large pieces of glass. Initially, Ocean parked two vehicles in the rear

of the building partially on Oza's property. Ocean eventually added three more vehicles to its fleet, all of which parked in the rear of the building and partially on Oza's property.

In 2002, the City of Goleta was incorporated. Under the City's zoning code, the Harwin and Oza parcels were assigned a manufacturing zoning designation. In 2008, Harwin sought a change of zoning to commercial to facilitate her ability to rent to commercial tenants. Oza requested that his parcel be included in the zone change. To that end, he sent a letter to the City in which he stated: "[A]s a condition of the lot line adjustment, there is a common access to both parcels through my parking lot and [Harwin] or his tenants are allowed an assigned number of parking places in my parking lot behind his building."

Subsequent to the rezoning, a dispute arose between Harwin and Oza. In early 2009, Oza claimed that he was entitled to charge "market rent" to Harwin's tenants for parking on his property. When Harwin refused, Oza sought to preclude Harwin's tenants from parking on the Oza Property by posting no trespassing signs with a warning that the vehicles would be towed and by blocking access to the parking area.

Harwin filed a complaint seeking a declaration that she had either an express, implied or prescriptive easement for ingress and egress and parking on and over Oza's property and an injunction preventing Oza from interfering with the easement. The trial court denied Harwin's requests for a temporary restraining order and preliminary injunction. After a four-day bench trial, the trial court granted declaratory and injunctive relief to Harwin. The trial court found that the dedication recorded as a condition of the lot line adjustment and the grant deed between Mallas and Harwin gave Harwin an express easement for ingress and egress over the Oza Property and the right to 12 parking spaces on the Oza Property. The trial court found, in the alternative that Harwin had acquired a prescriptive easement because she established open, notorious, and hostile use by using the Oza Property for ingress and egress and parking for 15 years. The court issued a permanent injunction enjoining Oza from interfering with Harwin's use of the easement.

On appeal, Oza asserts the trial court erred because (1) the lot line adjustment and agreement between the owners entitled Harwin to "adequate parking," not a fixed number of parking spaces, on Oza's property, (2) the grant deed between Mallas and Harwin did not expressly or impliedly reserve parking rights for Harwin's property, (3) a condition of the grant of easement required Harwin to contribute to the cost of insurance, maintenance, and taxes for the parking spaces, (4) Harwin did not establish the elements of a prescriptive easement, (5) the irrevocable license theory fails because it conflicts with the court's finding of hostile use and an irrevocable license is not perpetual, and (6) if the injunction stands, it must be modified to minimize the burden on the Ozas.

*DISCUSSION*

*The Dedication Required as a Condition of the Lot Line Adjustment Granted An Express Easement for 12 Parking Spaces to Harwin*

An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other's land. (6 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 15:1, p. 5.) Easements may be created in a number of ways, including express grant and prescription. (*Id*. at § 15:13, pp. 60-63.)

As a general rule, an easement conveyance is subject to the same rules of construction that govern the interpretation of contracts. (Civ. Code, § 1066; *City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.) When the grant of an easement is ambiguous, extrinsic evidence is admissible as an aid to interpretation. (Civ. Code, § 1647; *City of Manhattan Beach*, at p. 238.)

When the interpretation of a written instrument is challenged on appeal, the standard of review depends on whether the trial judge admitted conflicting extrinsic evidence to resolve any ambiguity in the instrument. If no conflicting extrinsic evidence was admitted, the interpretation of the conveyance is a question of law, which we review de novo. (*WYDA Associates v. Merner* (1996) 42 Cal.App.4th 1702, 1710.) But if extrinsic evidence was admitted, and if that evidence is in conflict, we will uphold any reasonable construction of the contract that is supported by substantial evidence. (*Ibid*.) "Even in cases

where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact, which must resolve such conflicting inferences in the absence of a rule of law specifying the inference to be drawn." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

In interpreting the easement as one for 12 parking spaces, the trial court relied in part on documents related to the planning commission's approval of the lot line adjustment. The staff report and recommendation contained the following language: "The lot line adjustment would not reduce the total number of parking spaces available (located outside the required setbacks). The project would significantly reduce the number of spaces on [the Harwin Property] by placing them within the boundaries of [the Oza Property]. In order to provide adequate parking for the restaurant facility on [the Harwin Property], a recorded agreement dedicating twelve parking spaces for [the Harwin Property]'s use shall be required prior to the finalization of the lot line adjustment. Pursuant to Section to [*sic*] 35-262.2.c of Article III required parking spaces shall be provided within 500 feet of the main building."

The trial court did not err in resorting to the staff report to interpret the County's direction to grant an easement for parking. (See, e.g., *City of King City v. Community Bank of Central California* (2005) 131 Cal.App.4th 913, 919, 948 [in interpreting municipal enactment, courts may consult evidence of legislative intent]; see also *Buehler v. Oregon-Washington Plywood Corp.* (1976) 17 Cal.3d 520, 526 [in determining the scope of an easement, extrinsic evidence may be used as an aid to interpretation unless such evidence imparts a meaning to which the instrument creating the easement is not reasonably susceptible].)[2]

[2] Oza argues that the staff report should be disregarded because the conditions of approval attached to the lot line adjustment states "the applicant shall record an agreement to dedicate adequate parking spaces from Lot 1 to Lot 2 for its current and future use." Oza's argument in this regard ignores the fact that the staff report expressly defines "adequate parking" as 12 spaces.

Oza's reliance on the various agreements he entered into with Mallas to support his argument that he is entitled to charge market rate for parking or charge for maintenance and taxes, etc., is misplaced. The easement was created by Mallas at the direction of the County and as a condition for granting the lot line adjustment. Thus, the scope of the easement is defined by legislative intent. Oza's interpretation, as expressed in the various agreements, has no bearing on interpretation of the scope of the easement. The only enforceable conditions attached to the easement are those prescribed by the County, and those conditions do not include the right to charge for use of the easement.[3]

*Harwin Established the Existence of a Prescriptive Easement*

To establish the elements of a prescriptive easement, the claimant must prove use of the property for the statutory period of five years, which use has been (1) open and notorious, (2) continuous and uninterrupted, (3) hostile to the true owner, and (4) under a claim of right. (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305.)

Whether the elements of a prescriptive easement are met is a factual question which we review for substantial evidence. (*Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449.) "In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court or jury has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different inferences may also be reasonable. [Citation.] The trier of fact is not required to believe even uncontradicted testimony." (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)

Oza argues that the trial court erred in finding that a prescriptive easement arose because he testified that he gave Harwin's late husband permission to park cars on his property. (See *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252 [landowner's express permission defeats assertion of a prescriptive easement].) Whether the use of the real property of another is hostile or merely a matter of neighborly accommodation "is a

[3] For similar reasons, we may not impose conditions on use of the easement contrary to that granted by the County.

question of fact to be determined in light of the surrounding circumstances and the relationship between the parties." (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 572.) "[C]ontinuous use of an easement over a long period of time without the landowner's interference is presumptive evidence of its existence and in the absence of evidence of mere permissive use it will be sufficient to sustain a judgment." (*Id.* at pp. 571-572.) Moreover, "once a prima facie case is shown by the party asserting the easement, the burden of proof shifts to the landowner to show the use is permissive rather than hostile." (*Applegate v. Ota* (1983) 146 Cal.App.3d 702, 709.) Oza could not produce a writing to that effect, and his testimony as to when he gave such permission was vague. The trial court was fully justified in giving Oza's testimony in this regard no credence. Oza's testimony that he gave the owner of Ocean permission to resume parking on his property after he posted no trespassing signs in 2009 is not relevant. As we stated in *Felgenhauer*, "once the easement is created, the use continues as a matter of legal right, and it is irrelevant whether the owner of the servient estate purports to grant permission for its continuance." (*Felgenhauer v. Soni, supra*, 121 Cal.App.4th at p. 451.)

The judgment is affirmed. Respondent shall recover costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

James W. Brown, Judge

Superior Court County of Santa Barbara

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